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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke
11 Probation Against,

Case No. 2001-134

12 **NANCY JO CAIN**
13 **1401 S. Magnolia Ave., #7**
Monrovia, CA 91016

PETITION TO REVOKE PROBATION

14 **Registered Nurse License No. 479913**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Petition to Revoke
20 Probation solely in her official capacity as the Interim Executive Officer of the Board of
21 Registered Nursing, Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about August 31, 1992, the Board of Registered Nursing issued Registered
24 Nurse License Number 479913 to Nancy Jo Cain ("Respondent"). The Registered Nurse License
25 was in effect at all times relevant to the charges brought herein and will expire on July 31, 2010,
26 unless renewed.

27 3. In a disciplinary action entitled *In the Matter of Accusation Against Nancy Jo Cain*,
28 Case No. N2006010837, the Board of Registered Nursing, issued a decision, effective July 23,

1 2006, in which Respondent's Registered Nurse License was revoked. The revocation was stayed
2 however, and Respondent was placed on probation for a period of five (5) years with certain
3 terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by
4 reference.

5 JURISDICTION

6 4. This Accusation is brought before the Board of Registered Nursing ("Board"),
7 Department of Consumer Affairs, under the authority of the following laws. All section
8 references are to the Business and Professions Code ("Code") unless otherwise indicated.

9 STATUTORY PROVISIONS

10 5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
11 any licensee, including a licensee holding a temporary or an inactive license, for any reason
12 provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

13 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
14 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
15 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
16 subdivision (b), the Board may renew an expired license at any time within eight years after the
17 expiration.

18 PETITION TO REVOKE PROBATION

19 7. Grounds exist for revoking probation and imposing the order of revocation of
20 Respondent's Registered Nurse License No. 479913. Condition 12 of the Board's decision states:

21 "If petitioner violates the conditions of her probation, the Board after giving
22 petitioner notice and an opportunity to be heard, may set aside the stay order and
impose the stayed discipline (revocation) of the petitioner's license.

23 If during the period of probation, an accusation or petition to revoke
24 probation has been filed against petitioner's license or the Attorney General's
25 Office has been requested to prepare an accusation or petition to revoke probation
26 against the petitioner's license, the probationary period shall automatically be
extended and shall not expire until the accusation or petition has been acted upon
by the Board."

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1 7. Respondent has violated the Probation Program, as set forth in the following
2 paragraphs:

3 **FIRST CAUSE TO REVOKE PROBATION**

4 **(Failed to Submit Quarterly Reports)**

5 8. At all times after the effective date of Respondent's probation, Condition 6 stated:

6 **"SUBMIT WRITTEN REPORTS** - Petitioner, during the period of
7 probation, shall submit or cause to be submitted such written reports/ declarations
8 and verification of actions under penalty of perjury as required by the Board.
9 These reports/declarations shall contain statements relative to petitioner's
10 compliance with all the conditions of the Board's Probation Program. Petitioner
11 shall immediately execute all release of information forms as may be required by
12 the Board or its representatives.

13 Petitioner shall provide a copy of this decision to the nursing regulatory
14 agency in every state and territory in which she has a registered nurse license."

15 9. Respondent's probation is subject to revocation because she failed to comply with
16 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
17 are as follows:

- 18 a. On or about January 2010, Respondent failed to submit her quarterly report for the
19 fourth quarter of 2009.
20 b. On or about April 2010, Respondent failed to submit her quarterly report for the first
21 quarter of 2010.
22 c. On or about July 2010, Respondent failed to submit her quarterly report for the
23 second quarter of 2010.

24 **SECOND CAUSE TO REVOKE PROBATION**

25 **(Failed to Participate in Treatment Program)**

26 10. At all times after the effective date of Respondent's probation, Condition 15 stated:

27 **"PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM**
28 **FOR CHEMICAL DEPENDENCE** – Petitioner, at her expense, shall successfully
complete during the probationary period or shall have successfully completed prior
to commencement of probation, a Board-approved treatment/rehabilitation
program of at least six months duration. As required, reports shall be submitted by
the program on forms provided by the Board. If petitioner has not completed a
Board-approved treatment/rehabilitation program prior to commencement of

1 probation, petitioner, within 45 days from the effective date of the decision, shall
2 be enrolled in a program. If a program is not successfully completed within the
3 first nine months of probation, the Board shall consider petitioner in violation of
4 probation.

5 Based on Board recommendation, each week, petitioner shall be required
6 to attend at least one, but no more than five 12-step recovery meetings or
7 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
8 support group as approved and directed by the Board. If a nurse support group is
9 not available, an additional 12-step meeting or equivalent shall be added.
10 Petitioner shall submit dated and signed documentation confirming such
11 attendance to the Board during the entire period of probation. Petitioner shall
12 continue with the recovery plan recommended by the treatment/rehabilitation
13 program or a licensed mental health examiner and/or other ongoing recovery
14 groups.”

15 11. Respondent's probation is subject to revocation because she failed to comply with
16 Probation Condition 15, referenced above. The facts and circumstances regarding this violation
17 are as follows:

- 18 a. On or about October 1, 2009 through June 30, 2010, Respondent failed to participate in
19 both the Nurse Support Group and Alcoholic Anonymous meetings.
20 b. On or about October 1, 2009 through June 30, 2010, Respondent failed to provide proof
21 of attendance at both the Nurse Support Group and Alcoholic Anonymous meetings.

22 THIRD CAUSE TO REVOKE PROBATION

23 (Failed to Submit to Drug Testing)

24 12. At all times after the effective date of Respondent's probation, Condition 17 stated in
25 part:

26 “SUBMIT TO TESTS AND SAMPLES - Petitioner, at her expense, shall
27 participate in a random, biological fluid testing or a drug screening program which
28 the Board approves. The length of time and frequency will be subject to approval
by the Board. The respondent is responsible for keeping the Board informed of
respondent's current telephone number at all times. Petitioner shall also ensure that
messages may be left at the telephone number when she is not available and ensure
that reports are submitted directly by the testing agency to the Board, as directed.
Any confirmed positive finding shall be reported immediately to the Board by the
program and the respondent shall be considered in violation of probation.”

13 Respondent's probation is subject to revocation because she failed to comply with
14 Probation Condition 17, referenced above. The facts and circumstances regarding this violation
15 are as follows:

- 1 a. Respondent failed to submit to random drug testing on the following dates: November
2 1, 2009, November 23, 2009, December 3, 2009, December 23, 2009, February 23,
3 2010, March 5, 2010, March 15, 2010, March 29, 2010, April 5, 2010, April 14, 2010,
4 and May 4, 2010.
- 5 b. Respondent failed to call in for random drug testing between the dates of December 29,
6 2009 through June 30, 2010.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking the probation that was granted by the Board of Registered Nursing in Case
11 No. N2006010837 and imposing the disciplinary order that was stayed thereby revoking
12 Registered Nurse License No. 479913 issued to Nancy Jo Cain;
- 13 2. Taking such other and further action as deemed necessary and proper.

14
15 DATED: August 3, 2010

Stacey Ben
for LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board of Registered Nursing Case No. N200601837

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement:

Nancy Jo Cain

Registered Nurse License No. 479913

Petitioner.

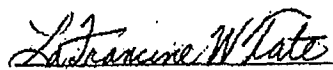
OAH No. N2006010837

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board as its Decision in the above-entitled matter.

This Decision shall become effective on July 23, 2006.

IT IS SO ORDERED this 23th day of June 2006.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

NANCY J. CAIN

OAH No. N2006010837

Registered Nurse License No. 479913,

Petitioner.

DECISION

This matter was heard before a quorum of the Board of Registered Nursing in Burlingame, California, on February 16, 2006. Melissa G. Crowell, Administrative Law Judge, Office of Administrative Hearings, presided.

Petitioner Nancy J. Cain represented herself.

Hannah Hirsch Rose, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

FACTUAL FINDINGS

1. On August 31, 1991, the Board of Registered Nursing issued to petitioner Nancy J. Cain registered nurse license number 479913.

2. On November 2, 2000, the board's executive officer filed an accusation alleging four causes for discipline. As a first cause, it was alleged that petitioner was subject to discipline under Business and Professions Code sections 490 and 2761, subdivision (f), in that she had been convicted of four substantially related offenses: two for petty theft with a prior conviction (December 1998 and February 1999), one for theft of property (October 1998) and one for possession of drug paraphernalia (June 1998). As a second cause, the accusation alleged she was subject to discipline under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (c), for unprofessional conduct for a conviction involving a controlled substance or dangerous drug, cocaine. Specifically, it was alleged that petitioner was convicted of possession of a controlled substance in December 1998, and that in connection with the December 1998

conviction of petty theft with a prior conviction, rock cocaine was found in petitioner's purse. As a third cause, the accusation alleged cause for discipline under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (c), unprofessional conduct by petitioner. Specifically, it was alleged that in April 1998 and November 1996 petitioner falsified hospital and patient records at two different Los Angeles area hospitals. The medications involved were Lortab, Morphine, Darvocet and Dilaudid. As a fourth cause, the accusation alleged cause for discipline under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (c), unprofessional conduct in that petitioner obtained these drugs by fraud, subterfuge, deceit or misrepresentation and that she possessed these drugs without legal authority.

Petitioner failed to appear at the scheduled hearing. A default decision and order sustaining all four causes for discipline and revoking petitioner's registered nurse license was issued effective March 1, 2002.

3. Petitioner filed this petition for reinstatement on October 12, 2005.

4. Petitioner served three terms in state prison. Following a release in 1999, she re-offended and was sent back to prison for sixteen additional months. Petitioner was released on parole on July 8, 2003, and successfully completed parole on August 7, 2004.

5. Upon her release from prison, petitioner entered Phoenix House residential drug treatment program which she completed in May 2004. She transitioned to sober living until September 2004 at which time she entered New Visions structured sober living. The managers of those programs each wrote a letter reporting that petitioner always tested negative as part of the required participation in their program and that she was a constructive member of the community. Petitioner completed the New Visions program in January of 2005. Petitioner now lives with a roommate who also is in recovery.

6. Petitioner has been clean and sober for four years. She attends meetings of Narcotics Anonymous or Alcoholics Anonymous three times a week. She is an active participant in the meetings, frequently acting as meeting secretary or setting up the meeting. Petitioner has a sponsor with whom she communicates at least three times a week.

7. Laura Gibson, a recovering alcoholic, met petitioner two years ago through Alcoholics Anonymous. She confirms petitioner's commitment to sobriety, her candor and honesty at meetings, and that she provides a positive example to other women.

8. Petitioner is under the care of a therapist. She sees the therapist once a month.

9. Petitioner worked for Tender Care Staffing from June 2004 to April 2005. She left that employment following an injury requiring surgery.

10. Petitioner seeks to return to nursing. She understands that it will be a long process and she is willing to do whatever it will take to get her nursing skills up to par. She finally feels confident that she can work around narcotics as she has a very clear understanding of what she has to lose.

LEGAL CONCLUSIONS

Petitioner has taken significant steps in rehabilitation, demonstrating a full and sincere commitment to recovery. By reason of her dedication and commitment to recovery, it would not be against the public interest to reinstate her registered nurse license on a probationary basis, provided that she take and successfully complete a nursing refresher course. Petitioner shall not be required to pay cost recovery.

ORDER

The application of petitioner of Nancy J. Cain for reinstatement of licensure is hereby granted. A license shall be issued to petitioner. Said license shall immediately be revoked, the order of revocation stayed and petitioner placed on probation for a period of five years on the following conditions.

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. NURSE REFRESHER COURSE – Petitioner shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. Petitioner is suspended from practice until the required course work is successfully completed, but may use her license for the limited purpose of completing clinical requirements of the required coursework.
2. OBEY ALL LAWS – Petitioner shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by petitioner to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, petitioner shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If petitioner is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

3. COMPLY WITH THE BOARD'S PROBATION PROGRAM – Petitioner shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of petitioner's compliance with the Board's Probation Program. Petitioner shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, petitioner's license shall be fully restored.

4. REPORT IN PERSON – Petitioner, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

5. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE – Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Petitioner's probation is tolled, if and when she resides outside of California. Petitioner must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Petitioner shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Petitioner shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Petitioner shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

6. SUBMIT WRITTEN REPORTS – Petitioner, during the period of probation, shall submit or cause to be submitted such written reports/ declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to petitioner's compliance with all the conditions of the Board's Probation Program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

7. FUNCTION AS A REGISTERED NURSE – Petitioner, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

8. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS – Petitioner shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary; as a registered nurse. Petitioner shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Petitioner shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, petitioner shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Petitioner shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

9. SUPERVISION – Petitioner shall obtain prior approval from the Board regarding petitioner's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Petitioner shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Petitioner's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum – The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate – The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours petitioner works.
- (c) Minimum – The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.
- (d) Home Health Care – If petitioner is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with petitioner as required by the Board each work day. Petitioner shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by petitioner with or without petitioner present.

10. EMPLOYMENT LIMITATIONS – Petitioner shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Petitioner shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Petitioner shall not work in any other registered nursing occupation where home visits are required.

Petitioner shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict petitioner from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Petitioner shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Petitioner shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If petitioner is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

11. COMPLETE A NURSING COURSE(S) – Petitioner, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Petitioner shall obtain prior approval from the Board before enrolling in the course(s). Petitioner shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to petitioner after photocopying them for its records.

12. VIOLATION OF PROBATION – If petitioner violates the conditions of her probation, the Board after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of petitioner's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. LICENSE SURRENDER – During petitioner's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, petitioner may surrender her license to the Board. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (a) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (b) One year for a license surrendered for a mental or physical illness.

14. PHYSICAL EXAMINATION – Within 45 days of the effective date of this decision, petitioner, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of petitioner's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by petitioner with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the Board is required until the Board has notified petitioner that a medical determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

15. PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE – Petitioner, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If petitioner has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation,

petitioner, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider petitioner in violation of probation.

Based on Board recommendation, each week petitioner shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Petitioner shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS – Petitioner shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Petitioner shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of petitioner's history of substance abuse and will coordinate and monitor any prescriptions for petitioner for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

17. SUBMIT TO TESTS AND SAMPLES – Petitioner, at her expense, shall participate in a random, biological fluid testing or a drugscreening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Petitioner is responsible for keeping the Board informed of petitioner's current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone

number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and petitioner shall be considered in violation of probation.

In addition, petitioner, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If petitioner has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

18. MENTAL HEALTH EXAMINATION – Petitioner shall, within 45 days of the effective date of this decision, have a mental examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of petitioner. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by petitioner.

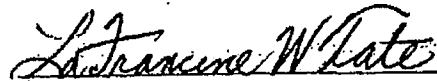
If petitioner is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the

Board is required, until the Board has notified petitioner that a mental health determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

19. THERAPY OR COUNSELING PROGRAM – Petitioner, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: June 23, 2006 .



LAFRANCINE TATE
President
Board of Registered Nursing

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On its own motion, the Board of Registered Nursing finds that there is a clerical error in the Decision and Order in the above-entitled matter and that such clerical error should be corrected so that "ordered date" is on January 30, 2002.

"It is so ORDERED January 30, 2002."

Ruth Ann Terry MPH, RN
RUTH ANN TERRY, MPH, RN
Executive Officer
BOARD OF REGISTERED NURSING

1 BILL LOCKYER, Attorney General
of the State of California
2 GLYNDA B. GOMEZ, State Bar No. 143448
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2542
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 NANCY JO CAIN

12 Respondent.

Case No. 2001-134

OAH No. L-2001070413

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

15 **FINDINGS OF FACT**

16 1. On or about November 2, 2000, Complainant Ruth Ann Terry, M.P.H.,
17 R.N., in her official capacity as Executive Officer of the Board of Registered Nursing,
18 Department of Consumer Affairs, State of California, filed Accusation No. 2001-134 against
19 Nancy Jo Cain ("Respondent") before the Board of Registered Nursing ("Board").

20 2. On or about August 31, 1992, the Board of Registered Nursing issued
21 registered nurse license number 479913 to Respondent. The registered nurse license will expire
22 on July 31, 2002, unless renewed.

23 3. On or about November 15, 2000, Henrietta E. Gaviola, an employee of the
24 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
25 2001-134, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
26 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's previous address of record with
27 the Board, which was 940 Dawson, Long Beach, CA. A copy of the Accusation, the related
28

documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4. On or about December 14, 2000, Henrietta E. Gaviola, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2001-134, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's resident address at 14325 Burbank Blvd., Van Nuys, CA 91401. A copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

5. On or about April 3, 2001, Henrietta E. Gaviola, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2001-134, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 14649 McCormick, Sherman Oaks, CA 91411. A copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about April 18, 2001, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's previous address of record, resident address, current address of record with the Board, and the address on the Notice of Defense, which is 13615 Victory Blvd. #204, Van Nuys, CA, 91401. The Notice of Hearing informed her that an administrative hearing in this matter was scheduled for November 1, 2001. Respondent failed to appear at that hearing. A copy of Respondent's Notice of Defense, the Notice of Hearing, and Declaration of Service are attached hereto as exhibit B, and are incorporated herein by reference.

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the

1 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
2 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

3 7. California Government Code section 11520 states, in pertinent part:

4 "(a) If the respondent either fails to file a notice of defense or to appear at the
5 hearing, the agency may take action based upon the respondent's express admissions or upon
6 other evidence and affidavits may be used as evidence without any notice to respondent."

7 8. Pursuant to its authority under Government Code section 11520, the Board
8 finds Respondent is in default. The Board will take action without further hearing and, based on
9 Respondent's express admissions by way of default and the evidence before it, contained in
10 exhibits A and B, finds that the allegations in Accusation No. 2001-134 are true.

11 9. The total costs for investigation and enforcement are \$16,252.75 as of
12 November 1, 2001.

13 DETERMINATION OF ISSUES

14 1. Based on the foregoing findings of fact, Respondent has subjected her
15 registered nurse license number 479913 to discipline.

16 2. A copy of the Accusation and the related documents and Declaration of
17 Service are attached.

18 3. The agency has jurisdiction to adjudicate this case by default.

19 4. The Board of Registered Nursing is authorized to revoke Respondent's
20 registered nurse license based upon the following violations alleged in the Accusation:

21 a. Business and Professions Code sections 2761(f) and 490, in that
22 Respondent has been convicted of crimes substantially related to the qualifications, functions,
23 and duties of a registered nurse;

24 b. Business and Professions Code section 2761(a) as defined in section
25 2762(c) of that code, in that on December 30, 1998, Respondent was convicted on her guilty plea
26 of Health and Safety Code section 11350 (possession of a controlled substance) and Penal Code
27 section 666 (petty theft w/prior jail term).

28 ///

1 c. Business and Professions Code section 2761(a) for unprofessional conduct
2 as defined by section 2762(e) of that Code, in that while on duty as a registered nurse,
3 Respondent falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in
4 hospital records.

5 ORDER

6 IT IS SO ORDERED that registered license number 479913, heretofore issued to
7 Respondent, is revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may
9 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
10 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
11 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
12 statute.

13 This Decision shall become effective on March 1, 2002.

14 It is so ORDERED February 30, 2002

15
16 *Sandra R. Erickson*

17 FOR THE BOARD OF REGISTERED NURSING
18 DEPARTMENT OF CONSUMER AFFAIRS

19 Attachments:

20 Exhibit A: Accusation No.2001-134, Related Documents, and Declaration of Service

21 Exhibit B: Notice of Defense, Notice of Hearing, and Declaration of Service

22 DOJ docket number:03579110-LA2000AD1205
23 jz-11/28/01
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Exhibit A
Accusation No. 2001-134,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 WILLIAM G. SCHUBERTH, State Bar No. 67450
Deputy Attorney General
3 California Department of Justice
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4 Los Angeles, California 90013
Telephone: (213) 897-2569
5 Facsimile: (213) 897-2804.

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2001-134

12 NANCY JO CAIN
940 Dawson
13 Long Beach, California

ACCUSATION

14 Registered Nurse License No. 479913

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 31, 1992, the Board of Registered Nursing issued
23 registered nurse license Number 479913 to Nancy Jo Cain ("Respondent"). The registered nurse
24 license expired on July 31, 1998, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing
27 ("Board"), under the authority of the following sections of the Business and Professions Code
28 ("Code").

1 4. Section 118(b) of the Code states, in pertinent part, that the expiration of a
2 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
3 period within which the license may be renewed, restored, reissued or reinstated.

4 5. Section 2750 of the Code states, in pertinent part, that the Board may
5 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
6 reason provided in Article 3 of the Nursing Practice Act.

7 6. Section 2761 of the Code states in pertinent part that the board may take
8 disciplinary action against a certified or licensed nurse or deny an application for a certificate or
9 license for any of the following:

10 (a) Unprofessional conduct . . .

11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the record of the
13 conviction shall be conclusive evidence thereof.

14 7. Section 2762 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the meaning
16 of this chapter it is unprofessional conduct for a person licensed under this chapter to do
17 any of the following:

18 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a
19 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or
20 furnish or administer to another, any controlled substance as defined in Division 10
21 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug
22 or dangerous device as defined in Section 4022.

23 (b) Use any controlled substance as defined in Division 10 (commencing with
24 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
25 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
26 dangerous or injurious to himself or herself, any other person, or the public or to the
27 extent that such use impairs his or her ability to conduct with safety to the public the
28 practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

...

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

8. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

9. Section 125.3 of the Code states, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

10. **DRUGS**

"Cocaine," is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(6).

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1 "Darvocet," a brand of propoxyphene napsylate, is a Schedule IV
2 controlled substance as designated by Health and Safety Code section
3 11057(c)(2).

4 "Dilaudid," a brand of hydromorphone, is a Schedule II controlled
5 substance as designated by Health and Safety Code section
6 11055(b)(1)(K).

7 "Lortab," is a Schedule III controlled substance as designated by Health
8 and Safety Code section 11056(e)(4).

9 "Morphine," is a Schedule II controlled substance as designated by
10 Health and Safety Code section 11055(b)(1)(M).

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Criminal Convictions)**

13 11. Respondent is subject to disciplinary action under sections 2761(f) and
14 490 of the code, in that respondent has been convicted of crimes substantially related to the
15 qualifications, functions, and duties of a registered nurse as follows:

16 a. On February 16, 1999, Los Angeles County Superior Court,
17 Northwest Judicial District, respondent was convicted on her plea of guilty of a violation of
18 Penal Code section 666 (petty theft with a prior jail term) in Case Number LA032391, entitled
19 *People vs. Nancy Jo Cain*.

20 The circumstances of the crime for which respondent was convicted are that on or
21 about January 27, 1999, respondent entered a Wal Mart store in Panorama City, California,
22 picked up and concealed merchandise inside her purse, and attempted to leave the store without
23 paying for those items.

24 b. On December 30, 1998, in the Los Angeles County Superior Court,
25 Northwest Judicial District, respondent was convicted on her plea of guilty of a violation of
26 Health and Safety Code section 11350 (possession of controlled substances) and Penal Code
27 section 666 (petty theft w/prior jail term) in Case Number LA032072, entitled *People vs.*
28 *Nancy Jo Cain*.

1 The circumstances of the crime for which respondent was convicted are that on or
2 about December 10, 1998, respondent entered a Costco store in Canoga Park, California, picked
3 up and concealed merchandise inside her purse, and attempted to leave the store without paying
4 for those items. Respondent was arrested and during a search of her person, rock cocaine was
5 found in her front pocket.

6 c. On October 27, 1998, in the Los Angeles County Municipal Court,
7 Van Nuys Judicial District, respondent was convicted on her plea of nolo contendere of a
8 violation of Penal Code section 484(a) (theft of property) in Case Number 8PN06857, entitled
9 *People vs. Nancy Jo Cain*.

10 The circumstances of the crime for which respondent was convicted are that on or
11 about October 26, 1998, respondent entered a Home Depot store in Van Nuys, California,
12 concealed items of gardening equipment inside her purse, and attempted to leave the store
13 without paying for those items.

14 d. On June 30, 1998, in the Los Angeles County Municipal Court,
15 Van Nuys Judicial District, respondent was convicted on her plea of nolo contendere of a
16 violation of Health and Safety Code section 11364 (possession of drug paraphernalia) in Case
17 Number 8PN04321, entitled *People vs. Nancy Jo Cain*.

18 The circumstances of the crime for which respondent was convicted are that on or
19 about June 26, 1998, during a routine traffic stop respondent was found to be in possession of
20 drug paraphernalia consisting of a pipe used for smoking rock cocaine.

21 SECOND CAUSE FOR DISCIPLINE

22 (Conviction/Controlled Substances)

23 12. Respondent is subject to disciplinary action under section number
24 2761(a) as defined in section 2762(c) of that code, in that on December 30, 1998, in the Los
25 Angeles County Superior Court, Northwest Judicial District, respondent was convicted on her
26 plea of guilty of a violation of Health and Safety Code section 11350 (possession of controlled
27 substances) and Penal Code section 666 (petty theft w/prior jail term) in Case Number
28 LA032072, entitled *People vs. Nancy Jo Cain*.

1 The circumstances of the crime for which respondent was convicted are that on or
2 about December 10, 1998, respondent entered a Costco store in Canoga Park, California, picked
3 up and concealed merchandise inside her purse, and attempted to leave the store without paying
4 for those items. Respondent was arrested and during a search of her person, rock cocaine was
5 found in her front pocket.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Falsify Hospital Records)**

8 13. Respondent is subject to disciplinary action under section 2761(a) for
9 unprofessional conduct as defined by section 2762(e) of that code, in that while on duty as a
10 registered nurse respondent falsified or made grossly incorrect, grossly inconsistent, or
11 unintelligible entries in hospital records as follows:

12 **WHITTIER PRESBYTERIAN HOSPITAL**

13 **Patient No. 000010258275**

- 14 a. On April 20, 1998, at 20:21 respondent withdrew from Pyxis 2
15 Lortab tablets for patient number 000010258275, but failed to
16 chart the administration or wastage of any portion of the Lortab in
17 any hospital record or otherwise account for the disposition of the
18 2 Lortab tablets.
- 19 b. On April 20, 1998, at 23:20 respondent withdrew from Pyxis 2
20 Lortab tablets for patient number 000010258275, but failed to
21 chart the administration or wastage of any portion of the Lortab in
22 any hospital record or otherwise account for the disposition of the
23 2 Lortab tablets.
- 24 c. On April 21, 1998, at 1:24 respondent withdrew from Pyxis 4 mgs.
25 of Morphine, a controlled substance, for patient number
26 000010258275, but failed to chart the administration or wastage of
27 any portion of the Morphine in any hospital record or otherwise
28 account for the disposition of the 4 mgs. of Morphine.

1 Patient No. 000010273837

- 2 d. On April 20, 1998, at 20:22 respondent withdrew from Pyxis 1
3 Darvocet tablet for patient number 000010273837, but failed to
4 chart the administration or wastage of any portion of the Darvocet
5 in any hospital record or otherwise account for the disposition of
6 the Darvocet tablet.

7 **KENNETH NORRIS JR. HOSPITAL**

8 Patient B.S. No. 03-37-20

- 9 e. On November 1, 1996, at 22:15 respondent signed out for 4 mgs.
10 of Dilaudid, a controlled substance, for patient B.S. no 03-37-20,
11 charted the administration the administration of 1 mg. of Dilaudid
12 on the medication administration record, failed to chart the wastage
13 of the remaining 3 mgs. of Dilaudid in any hospital record or
14 otherwise account for the remaining 3 mgs. of Dilaudid.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Obtain and Possess Controlled Substances)**

17 14. Respondent is subject to disciplinary action under section 2761(a) on the
18 grounds of unprofessional conduct as defined in section 2762(a) of that code, in that while on
19 duty as a registered nurse at Whittier Presbyterian Hospital on or about April 20, 1998, and
20 April 21, 1998, and Kenneth Norris Jr. Hospital on or about November 1, 1996, respondent
21 committed acts as follows:

- 22 a. She obtained Darvocet, Dilaudid, Lortab, and Morphine, all controlled
23 substances, by fraud, deceit, misrepresentation, or subterfuge, by taking
24 the drugs from hospital supplies, as set forth in paragraph 12 above, in
25 violation of Health and Safety Code section 11173.
26 b. She possessed Darvocet, Dilaudid, Lortab, and Morphine, all controlled
27 substances, as set forth in paragraph 12 above, in violation of Business and
28 Professions Code section 4060.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending registered nurse license Number 479913, issued to Nancy Jo Cain;

2. Ordering Nancy Jo Cain to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/2/00


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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(ps) 10/10/00